to be commended in not applying it as a hard and fast rule where the reason for the doctrine has failed.

EVIDENCE—GENERAL PRACTICING PHYSICIAN NOT COMPETENT AS AN EXPERT WITNESS ON INSANITY.—A physician, regularly educated as such, who testified that though he had a fair knowledge of insanity as a practitioner he did not profess to be an alienist, was by the trial court held competent as an expert witness on insanity. The court of review *held* this ruling to be error because examination did not show witness's knowledge or experience with insane cases. *State v. Doiron* (La.), 90 So. 920.

The opinion contains no discussion on principle and cites no authority in its support. In a great many jurisdictions the rule prevails that it is within the discretionary power of the trial judge to decide whether or not a witness is qualified to give an expert opinion and that such decision cannot be reviewed by an appellate court except in extreme cases. *City of Fort Wayne v. Coombs,* 107 Ind. 75; *Wright v. Williams Estate,* 47 Vt. 222; *Delaware & C. Steamboat Towboat Co. v. Starrs,* 69 Pa. 36; *Davis v. State,* 44 Fla. 32. "Such decision is so conclusive that it could not be reviewed unless there was an apparent error of law," is the expression of the court in *Perkins v. Stickney,* 132 Mass. 217. *Dole v. Johnson,* 50 N. H. 452, distinguishes between the necessary qualifications of an expert, which are reviewable by an appellate court, and the qualifications of the particular witness, which are not subject to review except as above stated. The ruling in the principal case would seem to be in conflict with the general trend of authority unless the trial judge's decision was founded on an apparent error in law. Thomas, J., in *Baxter v. Abbott,* 7 Gray (Mass.) 71, expresses what is the prevailing rule in most jurisdictions, "Every physician is an expert on insanity, though little weight is given to his opinion unless he shows special study or experience." (See BISHOP, CRIMINAL PROCEDURE, 544. Though the opinion of a mere medical graduate is given little consideration in most jurisdictions, when the study and experience of an average physician during the course of his practice is added the opinion is given greater weight. *White v. McPherson,* 183 Mass. 533; *Lowe v. State,* 118 Wis. 641; *Davis v. State,* 35 Ind. 496; *In re Dolbeer's Estate,* 149 Cal. 227. Where a physician of general practice, with the average experience in insane cases, has actually had an opportunity to observe the person whose sanity is in question, he is held competent as an expert in most jurisdictions. *Holland v. State* (Tex.), 192 S. W. 1070; *Porter v. State,* 140 Ala. 87; *In re Whiting,* 110 Me. 232. *Bishop v. Commonwealth,* 109 Ky. 558, held that where it was not shown that a physician had ever seen an insane person he was not competent as an expert on insanity, and appears to support the principal case. However, in that case the ruling on the necessary qualifications for an expert was unnecessary for the decision, which had to do with the admissibility of expert opinion. The Louisiana court appears to go contrary to the general trend of authorities both in ruling that a practicing physician is not competent as an expert on insanity and also in disturbing

the trial judge's decision as to the qualifications of the particular witness. See I WIGMORE ON EVIDENCE 569.

FINDING LOST PROPERTY—RIGHTS OF FINDER AND OWNER OF PREMISES.—A workman, while engaged in excavating a cellar under an old house, discovered about five inches below the surface of the ground an earthen jar containing $1,325 in gold pieces. In a suit between the workman, the owner of the premises, and the administratrix of the estate of one alleged to have been the owner, *held,* that as against the owner of the land the workman was entitled thereto as treasure-trove, since, in the absence of legislation, title to such property belongs to the finder as against the world except the true owner, and the owner of the soil in which treasure-trove is found acquires no title thereto by virtue of the ownership of the soil. *Vickery v. Hardin* (Ind. App.), 133 N. E. 922.

Treasure-trove is generally defined as any gold or silver, in coin or bullion, found hidden in the earth or other private place, but not lying on the ground, the owner of the treasure being unknown. I BL. COM. 295; 17 R. C. L. 1200. In the case of *Huthmacher v. Harris's Administrators,* 38 Pa. St. 491, where notes and bank bills, in addition to gold and silver coins, were found in a secret drawer, it was determined that the finder held the property as treasure-trove, "which may, in our commercial day, be taken to include the paper representatives of gold and silver, especially where found hidden with both these precious metals." In England, formerly, treasure-trove belonged to the finder; later it was decided it should go to the King for reasons of state and the coinage. I BL. COM. 296. But in this country not infrequently it is said that the law relating to treasure-trove has been merged into the law of the finder of lost property, which from the time of *Armory v. Delamirie,* 1 Strange 505, has been that the finder is entitled to possession of the lost property as against all the world except the true owner. *Danielson v. Roberts,* 44 Ore. 108; *Roberson v. Ellis,* 58 Ore. 219; *Huthmacher v. Harris's Administrators, supra; Weeks v. Hackett,* 104 Me. 264, 71 Atl. 858.

It has been held in numerous cases, however, that where money or other property is voluntarily laid in the place where it is found and then forgotten, the owner of the shop, bank, railway car, or other place where it was left is the proper custodian rather than the person who happens to discover it. *McAvoy v. Medina,* 11 Allen (Mass.) 548; *Lawrence v. State,* 1 Humph. (Tenn.) 227; *Kincaid v. Eaton,* 98 Mass. 139; *Foster v. Fidelity Safe Deposit Co.,* 264 Mo. 89; *Foulke v. N. Y. Consolidated R. Co.,* 228 N. Y. 269, 127 N E. 237. And likewise, where property, not falling within the definition of treasure-trove, is found imbedded in the soil, the owner of the land is entitled to the possession as against the finder. *Livermore v. White,* 74 Me. 452, where hides had been left in a vat of an old tannery; *Ferguson v. Ray,* 44 Ore. 557, where a sack of gold-bearing quartz was found buried; *Burdick v. Chesebrough,* 88 N. Y. Supp. 13, where valuable earthenware was unearthed; *South Staffordshire Waterworks Co. v. Shar-*